THE HON'BLE MR JUSTICE J.CHELAMESWAR

and

THE HON'BLE MR JUSTICE M.E.N.PATRUDU

Dated: 1st February 2006.

WRIT PETITION NO : 25007 of 2004

Between :

L.Sathi Reddy .. Petitioner

And

The State of Andhra Pradesh rep.

By its Secretary to Govt.

Revenue (Excise) Department,

Secretariat, Hyderabad and

three others .. Respondents

**ORDER (per JC,J)**

The unsuccessful applicant in OA No.1472 of 2003 which was dismissed by an order dated 20.12.2004 of the Andhra Pradesh Administrative Tribunal, preferred the present writ petition.

The petitioner, the 4th respondent and some others were directly recruited as Excise Sub-Inspectors in the year 1977. Admittedly, the petitioner obtained a lower rank in the selection compared to the 4th respondent herein. Under Rule 10 of the A.P.Prohibition and Excise Subordinate Services Rules, persons such as the petitioner appointed as the Prohibition and Excise Sub-Inspector are required to pass various tests prescribed therein within the period of probation or within extended period of probation which could be one year from the date of the

commencement of the probation of these parties. Subsequently, there was an amendment to the A.P.State and Subordinate Services Rules in the year 1981 by which amendment rule 24(c) was introduced in the rules which rules are now replaced by the A.P. State and Subordinate Services Rules, 1996. The corresponding present rule is Rule 16(4). The substance of the Rule 24(c) is that it enables the government to extend the period of probation by an order till the date of his passing the various tests referred to above and the rule further stipulates that wherever such an extension is granted by the government, the person availing the benefit of such an extension is deemed to have commenced his probation with effect from such a date which is to be fixed by the government and also the interregnum between the date so fixed and the date of actual passing of the test is mandated to be equivalent to the period prescribed for probation under the appropriate rules.

Admittedly, the 4th respondent passed the tests referred to earlier in the year 1981 i.e., some four years after the date of his actual appointment. Though in the natural course, by virtue of the operation of the Rule 24(c), the date of the commencement of the probation of the 4th respondent should have been fixed in accordance with the principle laid down in the said rule. However, the government published a seniority list dated 5.7.1984 of the petitioner, 4th respondent and others who were recruited in the year 1977. It appears that the petitioner was shown as a junior to the 4th respondent in the said list. Challenging the correctness of the said list, the petitioner filed R.P. No.1393 of 1985 before the Administrative Tribunal of Andhra Pradesh. The 4th respondent was also a party to the said petition. The said R.P. was allowed by an order of the Tribunal dated 17.9.1986 directing that the seniority list be prepared in accordance with the principles laid down in Rule 24(c). Aggrieved by the said decision, both the parties carried the matter to Supreme Court unsuccessfully. In view of the dismissal of the appeals consequent proceedings were taken and a final seniority list was prepared on 28.7.1989. It appears in the said seniority list, the petitioner was shown at Entry 109 and the 4th respondent at Entry 125 of the seniority list. It appears the 4th respondent once again filed another application before the Andhra Pradesh Administrative Tribunal in OA No.555 of 1992 claiming seniority over the petitioner herein, which OA was also dismissed by an order, dated 13.9.1994. Thereafter, the 4th respondent made a representation to the government re-asserting his claim. The 1st respondent issued G.O.Rt.No.156,

Revenue (Ex.I) Department, dated 27.1.2003 which reads as follows :

> "In the circumstances reported in references 1st and 3rd read above, after examination of the matter, the Government decided to consider the request of Sri J.M.Zafar for inclusion of his name in the panel for the year 1982-83 restoring his ranking at Sl.No.121/A below Sri B.Somasekhara Rao at Sl.No.121 and above Sri G.Shyam Raj at Sl.No.122 in the category of Excise Inspectors after issue of show cause notice to all those persons of Hyderabad Division and belonging to his batch and who would be adversely affected. Accordingly, Government hereby relax the rule 33(a) of A.P. State and Subordinate Services Rules in respect of Sri J.M.Zafar, Prohibition and Excise Inspector for his promotion as Excise Inspector notionally from the date of promotion of his junior.
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> 2 . The Commissioner of Prohibition and Excise shall take further action as per rules in the matter accordingly."

Aggrieved by the same, the petitioner herein approached the Andhra Pradesh Administrative Tribunal in OA No.1472 of 2003 praying that the G.O.Rt.No.156 be quashed which OA was dismissed by the order under challenge before us on the ground that the application is pre-mature. The Tribunal recorded a finding at para 9 as under :

> "Thus, the impugned order cannot be held as a final order as contemplated under the Administrative Tribunals Act, 1995…."

The language of G.O.Rt.No.156 is very categoric. The government in exercise of the power under Rule 31 of the A.P. State and Subordinate Services Rules, 1996 relaxed the application of the Rule 33(a) of the above said rules in the case of the 4th respondent. No doubt, the G.O. also mentioned that persons who are likely to be affected by such a decision are required to be put on notice. We do not wish to examine the question as to what useful purpose would such an exercise serve in view of the categoric decision of the government to relax the rigours of the Rule 33(a) of A.P. State and Subordinate Service Rules in favour of the 4th respondent. For purpose of the present writ petition, we hold that the decision of the Tribunal in dismissing the application on the ground, its premature cannot be sustained. A decision to relax the application of Rule 33 is already taken. Rule 33 stipulates that

the seniority of a person in service class or category etc., is to be determined by the date of the 1st appointment into the service. The effect of the relaxation of the applicability of the said rule is that that the seniority of the 4th respondent can be fixed otherwise than with reference to the date of his first appointment into the service which date in between the petitioner and the 4th respondent the relative seniority was earlier decided by the Andhra Pradesh Administrative Tribunal which order became final.

In the circumstances, the writ petition is allowed. The matter is remitted to the Tribunal for an appropriate decision in accordance with law on all the issues arising out of the pleadings in the OA. The interim order granted earlier in this writ petition shall continue to operate till the disposal of the OA.

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**J.CHELAMESWAR,J**

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**M.E.N.PATRUDU,J**

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**Dt : 1.2.2006**